

1 HONORABLE RONALD B. LEIGHTON  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 EQUAL EMPLOYMENT OPPORTUNITY  
11 COMMISSION,

12 Plaintiff,

13 v.

14 MASON COUNTY FOREST PRODUCTS,  
15 LLC,

16 Defendant.

17 DEBORAH BERNSTEN and LORRIE  
18 HASKINS,

19 Plaintiff-Intervenors

20 v.

21 MASON COUNTY FOREST PRODUCTS,  
22 LLC, and LONG BELL VENTURES, LLC,

23 Defendants.

24 CASE NO. CV 09-5609-RBL

25 ORDER REQUESTING SUPPLEMENTAL  
26 BRIEFING ON EEOC'S CLASS CLAIMS  
27 [Dkt. #67]

28 THIS MATTER comes before the Court upon Defendants' Motion for Partial Summary  
Judgment on Plaintiff EEOC's Class Claims [Dkt. #67].

To the extent it relies on jurisdictional challenges to the class claims, the Motion is  
DENIED. In short, the Court has jurisdiction because EEOC conciliated the class claim and the  
Complaint is reasonably related to Bernsten's initial charge. The Court will more fully explain its  
reasoning in its final Order on Defendants' challenge to Plaintiffs' class allegations.

1 In its Reply brief, MCFP argues (for the first time) that EEOC “cannot show the  
2 existence of any individuals not party to the suit.” (Reply at 11, Dkt. #91, emphasis in original.)  
3 A party that does not bear the burden of persuasion at trial can meet the initial burden of a  
4 motion for summary judgment by showing that the opposing party's evidence is insufficient to  
5 support its claim at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). EEOC has not  
6 shown any evidence that would support its class claim at trial. Nothing in the record shows any  
7 female besides Bernsten and Haskins witnessed Stegenga's comments or was terminated on the  
8 basis of sex.

9  
10 At the same time, however, “[t]he District Court need not consider arguments raised for  
11 the first time in a reply brief.” *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). The Court  
12 will not grant the Motion based on an argument MCFP raised in its Reply, without providing.  
13 EEOC an opportunity to show that evidence exists that would support its class claims at trial.

14  
15 The court therefore REQUESTS that EEOC file an additional Response to MCFP's  
16 Motion for Summary Judgment on EEOC's Class Claims. This Response should only address  
17 whether there are any female MCFP employees besides Bernsten and Haskins who witnessed  
18 Russell Stegenga's comments, or were unlawfully terminated on the basis of sex. This Response  
19 should be limited to 10 pages and filed by June 24th, 2011. If they choose to do so, MCFP may  
20 file a 5 page Reply no later than June 29th.

21  
**IT IS SO ORDERED.**

22  
23 Dated this 13<sup>th</sup> day of June, 2011.

24  
25  
26  
27  
  
28

RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE